IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Crl.Rev.Pet.No. 1276 of 2007(D)

CC.27/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHENGANNUR

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REVN. PETITIONER: PETITIONES/ACCUSED NO.1 TO 3

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1. SAMUEL MATHAI, AGED 55 YEARS,
   S/O.GEEVARGHESE MATHAI, PIRARATTU HOUSE,
   PUNTHALA P.O., VENMONI VILLAGE.

2. P.M.GEORGE, AGED 62 YEARS,
   -DO- -DO-

3. THANKACHAN, AGED 58 YEARS,
   -DO- -DO-

BY ADV. SRI.S.MUHAMMED HANEEFF
SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA,
   REP. BY SUB INSPECTOR OF POLICE, VENMONI
   POLICE STATION (CRIME NO.11 OF 2001),
   REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. LISSIE JOHN, W/O.JOHNYKUTTY,
   THEVALAKANDATHIL, POONTHALA ERAMMURIYIL,
   VENMONI VILLAGE, CHENGANNUR.

BY ADV. SRI.P.VINODKUMAR
SRI.P.VINODKUMAR
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 1276 OF 2007 D

Dated this the 14th day of August, 2007

O R D E R

The revision petitioners, who are accused Nos.1 to 3 in C.C.No.27/03 on the file of the JFCM-II, Chengannur arising from a private complaint alleging the commission of offences punishable under sections 447, 294(a), 341, 323, 324, 326, 354, 392 and 394 read with section 34 IPC, challenge the order dated 1.3.07 passed by the said Magistrate framing charge against the accused for the aforementioned offences.

2. According to the revision petitioners with regard to the same occurrence, the second respondent complainant had lodged a complaint before Venmani police who had registered Crime No.11/01 and after investigation, had submitted a final report alleging the commission of offences punishable under sections 447, 324, 323, 427 and 354 read with section 34 IPC and the aforesaid Magistrate had taken cognizance of the offences in the police report and had registered the case as CC.No.126/2001. The revision petitioners would contend that the accused and the allegations in both the private complaint as well as the police

charge case are the same except for the additional offences under sections 379 and 326 IPC in the private complaint and there is absolutely no material in support of the allegation for the additional offences and if so, pre-eminently this was a fit case to be tried along with the police charge case before the same court. The revision petitioners would have it that the C.C.No.126/01 has been fully tried and what remains is the final arguments and pronouncement of judgment and it is at this stage that the learned Magistrate has framed the charge in the private complaint and thereby the petitioners have lost the right available to them to have both the cases clubbed and consolidated together and tried as one single case by virtue of section 210 Cr.P.C.

3. I am afraid that I cannot agree with the above submissions. Eventhough both the private complaint as well as the police charge case arise out of the same occurrence, the private complaint contains additional allegations with regard to offences punishable under sections 379 and 326 IPC which are offences in addition to those involved in the police charge case. Thus, the prosecution versions in the police case and private complaint are materially different. In such a case, clubbing or

consolidation is not permissible. Both the cases cannot be merged together for trying them as one single case. [See ***Harijinder Singh Vs. State of Punjab*** (AIR 1985 SC 404) and ***Abdul Salam Vs. Inspector of Police*** (1*994 CrlLJ 578(Madras))*]. They can only be separately tried in quick succession and judgments pronounced in quick succession. In other words, evidence should be recorded in both the cases one after the other. The judgment in the case tried first should be reserved until the trial of the second case is also over and then the judgments are to be pronounced one after the other. [See ***Padmanabhan Mani Vs. Swaminathan***(1986 KLT 170)]. When the trial of the police charge commenced, the petitioners were not able to convince the Magistrate that the prosecution version in both the police case and complaint case was substantially the same and that there was no reliable material to support the additional offences in the complaint case. The petitioners having stood trial in the police charge case without any demur and without any request to try the private complaint also along with the police charge case, they cannot now take exception to the separate trial of the complaint case by the Magistrate which is in accordance with the law laid down by the

Supreme Court and this court. I see no reason to interfere with the order framing charge against the revision petitioners. It is needless to caution the Magistrate that the judgment in the police charge case will have to be pronounced only after the conclusion of the trial in the complaint case.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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